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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/641,410

08/18/2000

Alice Mary O'Donnell-Kiely

7256

7590

10/16/2008

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EXAMINER

CHAWLA, JYOTI

ART UNIT

PAPER NUMBER

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/641,410	<b>Applicant(s)</b> O'DONNELL-KIELY, ALICE MARY	
	<b>Examiner</b> JYOTI CHAWLA	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on July 30, 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 349-382 is/are pending in the application.
- 4a) Of the above claim(s) 370-382 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 349-369 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

### **DETAILED ACTION**

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on July 30, 2008 has been entered. Claims 1-348 have been cancelled and claims 349-382 have been added.

**Note:** To expedite prosecution applicant is requested to furnish support for the subject matter recited in the new and amended claims in the current application. Furthermore, the applicant is requested to recite the claims such that the rejections made under 35 USC 112 in the previous office actions are corrected.

### ***Election/Restrictions***

Newly submitted claims 370-382 are directed to a method of making a support, i.e., an invention that is independent or distinct from the invention elected in response filed January 18, 2003 to the original restriction requirement.

Since applicant had elected a product and not the method of making in response to the election requirement the method of making the product, i.e., claims 370-382 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03. Thus claims 345-348 will not be examined in the present office action.

**Thus claims 349-369 will be examined in the present application.**

### ***Amendments to Specification***

The amendment filed July 30, 2008 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment

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shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: the addition of "composite material" in paragraphs [0043], [0044], [0164] and [0166], which was not disclosed in the specification as originally filed and has also been added to claims. The term "a composite material" as disclosed in the amendment would introduce new matter and change the description from "a candy bar " to "a composite material candy bar" in paragraph [0164], which is not the same as a generic term "candy bar" as originally described. Therefore, the amendments to the specification introduce new matter and the applicant is required to cancel the new matter in the reply to this Office Action.

***Claim Rejections - 35 USC § 112 (First paragraph)***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 368 and 369 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. In the instant case claim 368 recites "A support for a frozen comestible comprising two edible ingredient materials and means for making a support for a frozen comestible". Claim 368 as recited is non enabled as there is no disclosure either in the claim or in the specification about what means or apparatus or equipment is employed to make a support for a frozen confection as recited. Thus one of skill would not be able to make and use the invention without disclosure of the specific means of making or manufacturing a support.

Similarly terms "edible homogenous material" has also not been defined by applicant's disclosure. The original disclosure only uses the term "homogenous support" but does not disclose that the support comprises of "homogenous materials".

The term "composite material" as added to the claims introduces new matter as the term is not disclosed in the original disclosure and the introduction of the term "composite material" changes the description of "a candy bar " to "a composite material candy bar", which is not the same as a generic term "candy bar" as originally described. Other similar changes have been made throughout the claims, which are not supported by the original disclosure. Therefore, the amendments to the claims introduce new matter and the applicant is required to cancel the new matter in the reply to this Office Action.

**Note:** To expedite prosecution applicant is once again requested to furnish support for the newly added terms and phrase and subject matter recited in the new and amended claims in the current application. Furthermore, the applicant is requested to provide support where the claimed term or phrase is recited in the same context as it is being claimed.

***Claim Rejections - 35 USC § 112 (Second paragraph)***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 349-369 are rejected under 35 U.S.C. 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 349-359 are unclear for the recitation of “comprising a material comprising two edible ingredient materials” as it is unclear as to what is encompassed by the terms “ingredient” and “material” and “ingredient material” as it is used in claim 349. It is unclear as to how each of the terms “ingredient” and material are different from “ingredient materials” as recited in claims 349-359. Thus, the claims use terms ingredient and material and “ingredient material” interchangeably which makes the claims unclear as recited for the purposes of prior art comparison. Clarification and/or correction is required.

Claims are indefinite for the recitation of relative term “bite size fun confection” of claim 351 and “bite size fun composite material” of claim 361. The term “bite size material” is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. The term “bite size ingredient” may have different meaning for different people.

Claim 353 is rejected for being indefinite as it is unclear as to what added limitation is being recited in claim 349. Claim 353 depends from claim 349 and Claim 353 restates the limitations of independent claim 349, which are already part of claim 353. Thus, either claim 353 does not further limit claim 349 or applicant has chosen to redefine a known term. Where applicant acts as his or her own lexicographer to specifically define a term of a claim contrary to its ordinary meaning, the written description must clearly redefine the claim term and set forth the uncommon definition so as to put one reasonably skilled in the art on notice that the applicant intended to so redefine that claim term. *Process Control Corp. v. HydReclaim Corp.*, 190 F.3d 1350, 1357, 52 USPQ2d 1029, 1033 (Fed. Cir. 1999).

Claims 349-369 are unclear for the recitation of “two combined ingredient materials” as it is unclear as to what is encompassed by said term. It is unclear whether the term “two combined ingredient materials” refers to two separate ingredients (such as, sugar

and water) or the term refers to two combined ingredient materials (such as cereal and chocolate). Clarification and/or correction is required.

The term "fun confection" or "fun composite material" in claims including 351 and 361 are relative terms which renders the claim indefinite. The term are not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. The terms "fun confection" might have different meanings for different people, e.g., bubble gum might be a fun confection for one person, and a disturbance or not fun confection for the other. Correction is required.

Claims including 362 are indefinite for the recitation of phrase "homogenous material" has also not been defined by applicant's disclosure. The original disclosure only uses the term "homogenous support" but does not disclose that the support comprises of homogenous ingredient materials". Thus the metes and bounds of the term are unclear and correction and /or clarification is required.

Claims 349-369 are indefinite for the recitation of "composite material". Applicant has not distinguished between the terms in the specification and thus the claim as recited is unclear as to what is the scope of the term composite material. It is unclear whether the claim requires materials that can form a composite or materials that are composites themselves or some other.

Claim 349-369, as recited is indefinite for the recitation of "edible composite material comprises two combined ingredient materials...each.. comprises " as it is unclear whether the edible composite material comprises two of the combined ingredients listed or if the two combined ingredients in the composite are composites themselves comprised of the listed ingredients. Clarification and/or correction is required.

Claims 349-369 once again contain the transitional phrases “a composite material, “ two edible ingredient materials”, “two combined edible ingredient materials” “edible composite material comprises two combined ingredient materials, wherein each of said two combined ingredient materials comprises a candy...graham, filling, gelatin, fruit” which makes the claimed subject matter unclear and thus it renders the claims indefinite. It is unclear as to what is encompassed by said terms. Do the terms include an ingredient that goes in to make a composite such as flakes or raisins or sugar etc., or does the term include composite pieces as an ingredient in making the edible support, such as, chocolate chip cookies or frosted flakes etc. The term “composite” recited is indefinite as it is unclear as to what the term composite refers to because even if a small part of edible support comprises a composite, then the entire support would be considered as a composite support and not just a part of the support would be designated as being a composite material or two ingredient material or two combined ingredient material. It is further unclear as to what relationship do terms like “a composite material”, “ two edible ingredient materials”, “two combined ingredient materials” “composite ingredient comprising two combined edible ingredient materials” have to each other. Clarification and consistent use of the same terminology is requested. Correction is required to expedite the prosecution.

Further, a composite is defined as "made of separate elements", i.e. made of more than one element, i.e. comprising a minimum of two ingredient materials. Thus, either claim 291 does not further limit claim 290 or applicant has chosen to redefine a known term. Where applicant acts as his or her own lexicographer to specifically define a term of a claim contrary to its ordinary meaning, the written description must clearly redefine the claim term and set forth the uncommon definition so as to put one reasonably skilled in the art on notice that the applicant intended to so redefine that claim term. *Process Control Corp. v. HydReclaim Corp.*, 190 F.3d 1350, 1357, 52 USPQ2d 1029, 1033 (Fed. Cir. 1999).

Claim 368 and 369 are indefinite for the recitation of "A support for a frozen comestible comprising ....and means for making a support for a frozen comestible". The claim as



recited is unclear as to what means of making an edible support are being claimed. Does the term “means” refer to an apparatus or equipment or industrial setup or some other way of making an edible support for a frozen comestible. Correction is required. In order to expedite the prosecution claims 248 and 264 will be regarded as product claims and not apparatus claims and will be rejected as such.

### ***Double Patenting***

#### ***Nonstatutory Provisional Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

(a) Claims of the current application are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims of copending Application No. 10/163,209. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 326, 339-341 of the present invention are drawn to an edible support for a frozen comestible with ingredient materials, as is the case with claims 232, 239, 241-242, 244-245 of Application 10/163,209.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

(b) Claims 355, and 365 of the current application are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 68, 69 and 76 respectively, of copending Application No. 10/167,812. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 355, and 365 of the present invention are drawn to an edible support for a frozen comestible with composite ingredient materials, as is the case with claims 68, 69 and 76 of Application 10/167,812.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1) Claims 349-369 are rejected under 35 U.S.C. 102(b) as being anticipated by Musher (US 2217700).

The references and rejection are incorporated herein and as cited in the previous office actions.

Musher teaches ice cream (frozen comestible) on an edible support structure or a composite support which has at least two edible discernable (i.e. perceptible) edible materials or components or members that are combined together to make the support, i.e., two combined ingredient materials (Page 1: Column 1, lines 37-46 and Column 2 lines 40-55) also (Page 4: column 1, line 72 to Column 2, line 23), as instantly claimed .

The support as taught by Musher (figures 1-6) comprise of various edible ingredients, for example, cereal flakes, sugar, candy flakes or ribbons, grains, hard fat flakes or ribbons (Page 1, column 1 to Page 5, column 2, line 40; Page 5: Column 2, lines 46-56 and Page 6: Column 1, lines 35-47) that are combined to form the support, thus edible ingredient materials comprise an ingredient which forms a support, as claimed. Further since a plurality of ingredients are combined in the support as taught by Musher, the support comprises of composite ingredient materials and various combinations of ingredients that form the support, as recited in claims.

The support for a frozen confection as taught by Musher is made to be held in hand , (see figures 1-6), and may be made of stick, which can be either entirely edible or part inedible, which acts as a handle or support, as recited in claims.

The edible/inedible stick as taught by Musher is attached to the cereal flakes, sugar, candy flakes or ribbons, grains, hard fat flakes or ribbons (Page 1, column 1 to Page 5, column 2, line 40; Page 5: Column 2, lines 46-56 and Page 6: Column 1, lines 35-47). The end of the stick may include a lollipop that is also connected structure pieces (Page 5: column 1, lines 26-33 and 54-65), which may include items such as

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nuts or even a plurality of candy pieces (page 3: Column 2, lines 14-21 and Page 5: Column 2, lines 24-35), and the lollipop (fun ingredient, centre of the confection) and structure pieces i.e., before forming into a three dimensional composite support (Page 4: column 1, line 72 to Column 2, line 23) may be coated in hard fat (fluid ingredient), which prevents the transfer of moisture and improve the adhesion or grip of the frozen comestible (Page 3: Column 2 lines Page 5: Column 1, lines 65 to Column 2, line 2), as recited in claims. Musher also teaches of a support for a frozen comestible, which comprises of two edible ingredient materials, which include a homogenous material such as candy, a composite material with one or more ingredients, for supporting the frozen comestible, as recited in claims. The ingredients as taught by Musher comprise a support wherein one portion of the support extends into the ice cream and the other portion extends out of the ice cream for holding the frozen confection vertically i.e., the support forms a handle for an individual to hold a frozen comestible with (See figures 1-6 and Page 2: Column 2, lines 20-25; Page 3: Column 1 line 70-Column 2 line 5). Also see Page 6: Column 1, lines 4-70; Page 2, Column 2, line 4 to Page 3, Column 1, line 60) a handle as recited.

The composite support as taught by Musher has plurality of individual ingredients, which are the ingredient materials that form the support/handle. The ingredient materials can be discernible (i.e. perceptible), such as the cereal flakes, candy flakes, ribbons, grains etc., (Page 1: Column 1, lines 37-46 and Column 2 lines 40-55) also (Page 4: column 1, line 72 to Column 2, line 23). Musher further teaches the support structure for the frozen confection which includes an edible stick or lollipop, and a framework of other ingredients around it, where the composite support made by attaching the stick to the cereal flakes, sugar, candy flakes or ribbons, grains, hard fat flakes or ribbons (Page 1, column 1 to Page 5, column 2, line 40; Page 5: Column 2, lines 46-56 and Page 6: Column 1, lines 35-47), as instantly claimed. The stick part of the composite support as taught by Musher can be completely edible or part edible and part inedible (Page 1, column 1 to Page 5, column 2, line 40; Page 5: Column 2, lines 46-56 and Page 6: Column 1, lines 35-47). Musher also teaches of voids or hollow in the edible support,

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structure which is filled with chocolate or sugar syrup and confection bits and all of this composite has a common centre, i.e., concentric as disclosed in claim 350. Musher further teaches that the structure pieces around the lollipop, which include candy, can be placed concentrically (i.e. a circle around the lollipop) or maneuvered in some other manner on the support to improve the strength of the support, (page 5: Column 1, lines 45-54 and Column 2, lines 24-35), i.e., Musher teaches of support for frozen comestible having means for inhibiting the breakage. Musher also teaches that the finished product or the composite formed support can be coated with chocolate or sprinkled with other flavoring material, i.e., enrobed or dipped ingredient which is fluid (Page 3: Column 2, lines 25-30) to form a moisture resistant barrier as instantly claimed.

Regarding the means for making the support phraseology as claimed in 368, applicant is referred to rejection under 35 USC 112. Further it is noted that an edible support as recited in claims 349-369 is a different invention than the means or apparatus or equipment that is used to make the support, therefore, claims 368 will only be examined to the extent to which they describe the product. Since Musher teaches of a support comprising two ingredient materials and also composite material, thus claim 368 is anticipated by Musher.

Regarding claims 358, 367 and 369, Musher teaches of the ice confection with the support in it in the figures as instantly claimed.

Thus the invention as recited in claims 349-369 are anticipated by Musher.

1) Claims 349, 351-369 are rejected under 35 U.S.C. 35 U.S.C. 102(b) as being anticipated by Feybusch (US 1638480).

Feybusch teaches edible cones for the support of frozen confections such as ice creams or sundaes, i.e., edible support. The support or cone taught by Feybusch comprises of two ingredient materials, i.e., cone making pastry material (such as sugar, flour etc) and edible adhesive material, such as, molasses (Page 1, lines 55-63), and popcorn or nuts or brittle or puffed rice (Page 1, lines 20-30) as instantly claimed. The

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ingredients sugar, water and flour etc., that are typical ingredients of the pastry cone (i.e., support for a frozen comestible) as taught by Feybusch comprise an ingredient in the support as recited in claim 349.

Regarding claim 351, 359 and 361, Feybusch teaches of molasses, popcorn, pastry cone, nuts and puffed rice comprise at least two edible ingredient materials that are bite size, fun and embedded in the edible support by using molasses as instantly claimed.

Regarding claims 352 and 353, 360 and 363, Feybusch teaches of pastry cone (composite material) and nut brittle or popcorn with molasses, each of these have two combined ingredients as instantly claimed (Feybusch Figures 1 and 2 and page 1), which makes the support a composite material support as instantly claimed.

Regarding claims 354 and 364, Feybusch teaches of pastry cone (composite material) and nut brittle or popcorn with molasses, each of these have two combined ingredients as instantly claimed (Feybusch Figures 1 and 2 and page 1), which makes the support a composite support made of multiple ingredients as recited in claims 354 and 364 instantly claimed.

Regarding claim 355, Feybusch teaches of an edible pastry cone with molasses coating, (i.e., an edible binder and a moisture resistant barrier). The molasses covered cone is further rolled in popped corn, or puffed rice, (i.e., edible coating) or peanuts (i.e., nut) or nut brittle (i.e., candy or confection) (See Page 1), as instantly claimed.

Regarding claim 356, Feybusch teaches plurality of ingredients, such as, molasses which is an edible binder and/or moisture barrier. The edible support also comprises of puffed or crisped rice, popped corn (cereal), or peanuts (nuts) or nut brittle (composite bits) (page 1), as instantly claimed. Feybusch also teaches of coating the pastry cone with molasses (Page 1, lines 57-65). Feybusch also teaches that molasses forms a

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practically waterproof intermediate envelope, i.e., molasses forms a moisture resistant barrier (Page 1, lines 75-80), as instantly claimed.

Regarding claim 357, the finished cone as taught by Feybusch can be held in hand, which is a handle (handle: a part of a thing made specifically to be grasped or held by the hand). Thus the cone as taught by Feybusch comprises a handle as instantly claimed.

Regarding claim 358, Feybusch teaches of support for a frozen comestible, such as, ice cream. The details of Figure 3 show a picture of ice cream on top of the cone. Feybusch also teaches that the ice confection is highly palatable in the edible support containing with molasses with popcorn or peanuts or rice (Page 1, lines 85-95).

Regarding claim 362, molasses is a homogenous material and is part of the support as taught by Feybusch.

Regarding claim 365, Feybusch teaches of the composite material of the edible support made up of two ingredient materials, such as, pastry cone which is a cookie or pasty or cracker. Feybusch also teaches of molasses which is an edible binder and /or a moisture resistant material. In addition Feybusch teaches of popcorn or puffed rice which is also known as crisped rice which form an edible coating. Feybusch further teaches of nut brittle which is a composite candy or confection. Thus the materials as taught by Feybusch (page 1, lines 20-30 and 55 to 105) fall in the instantly claimed choices.

Regarding claim 366, The edible cone as taught by Feybusch is a support for the iced confection, which comprises, pastry cone, molasses, popcorn or nuts or puffed rice or brittle (Figures 1-3 and page 1), which are all ingredients that make up the support for a frozen comestible. Further, the edible cone as taught by Feybusch is a support for the

iced confection, which can also be held in hand, i.e., a handle (Figures 1-3 and page 1) as instantly claimed.

Regarding claim 367, Feybusch teaches of support for a frozen comestible, such as, ice cream. The details of Figure 3 show a picture of ice cream on top of the cone. Feybusch also teaches that the ice confection is highly palatable in the edible support containing with molasses with popcorn or peanuts or rice (Page 1, lines 85-95).

Regarding claim 368 the applicant has chosen to claim an edible support (a product) and a means of making that support (apparatus or equipment) in one claim. One can claim one invention at a time and support and means for making the support are considered as two separate inventions.

**Note:** Regarding the means for making a support as recited in claims **343** applicant is referred to the rejection under 35 USC 112 above.

Regarding claim 368, the edible support or cone taught by Feybusch comprises of two ingredient materials, i.e., cone making pastry material (such as sugar , flour etc) and edible adhesive material, such as, molasses (Page 1, lines 55-63), and popcorn or nuts or brittle or puffed rice (Page 1, lines 20-30) as recited in claim 343.

Regarding claim 369, Feybusch teaches of support for a frozen comestible, such as, ice cream. The details of Figure 3 show a picture of ice cream on top of the cone. Feybusch also teaches that the ice confection is highly palatable in the edible support containing with molasses with popcorn or peanuts or rice (Page 1, lines 85-95).

Thus the invention as recited in claims 349, 351-369 is anticipated by Feybusch.

### ***Response to Arguments***

Applicant's submission of July 30, 2008, cancelling all the claims examined in the final office action and adding all new claims 349-369 has been considered. All the remarks



filed July 30, 2008 are addressed to the new claims and thus are moot in view of the new grounds of rejection.

I) Regarding the support for the terms rejected under 35 U.S.C. 112, applicant has presented no comments and although the applicant has removed the rejected claims, the newly added claims continue to be unclear for the reasons of record. For expediting the prosecution in future, the applicant is requested to provide support in the original disclosure of the present application for future reference.

II) Applicant's remarks regarding Musher have been fully considered but have been responded in the previous office action dated April 30, 2008 not been found persuasive.

Applicant's claim for new and unexpected results has been considered however applicant's remarks have materials and ingredients that have not been claimed as such and the applicant also claims of obtaining unique results by using commonly known and used components . Further the remarks offer no new data or experimentation that provides any evidence of the unexpected results. Thus applicant's remarks are not persuasive and claims 249-269 are rejected for reasons of record.

Thus applicant's remarks have been fully considered but have not been found persuasive and claims 319-344 have been rejected for reasons of record.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JYOTI CHAWLA whose telephone number is (571)272-8212. The examiner can normally be reached on 9:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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